

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

INFORMAL DOCKET NO.: 1953(I)

KAIRAT NURGAZINOV,

— vs. —

**MICHAEL HITRINOV a/k/a
MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.**

**COMPLAINANTS' RESPONSE TO RESPONDENTS'
MOTION FOR EXTENSION OF TIME**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission's (the "Commission") Rules of Practice and Procedure (46 C.F.R. 502 *et seq.*), Complainants, through their Counsel, Marcus A. Nussbaum, Esq., respectfully submit this brief as a Response to Respondents' Motion for Extension of Time.

Complainants respectfully submit the instant Response in opposition to yet another request by Respondents for an extension of time beyond the date certain set by the Presiding Officer for submission of papers in this matter; now to reply to Complainants' *timely* Response to the Presiding Officer's nine (9) inquiries at bar. As set forth below, this *umpteenth* application by

Respondents is untimely, disingenuous and is made with ‘unclean hands’, and upon *no good cause shown*. Consequently, it is respectfully submitted that Respondents’ request for an extension of time should be denied in its entirety.

Respondents’ Request for an Extension of Time is Untimely

It is respectfully submitted that Respondents’ instant request for an extension of time is *untimely* and should therefore be summarily denied by the Presiding Officer.

Standard of Review

Section 502.102 of the Commission’s Rules of Practice and Procedure states, in relevant part, as follows:

Enlargement or reduction of time to file documents. (a) Motions for enlargement or reduction of time for the filing of any pleading or other document, or in connection with the procedures of subpart L of this part, may be granted upon a showing of good cause. Motions must set forth the reasons for the request **and be received at least seven (7) days before the scheduled filing date**. Motions filed less than seven (7) days before the scheduled filing date may be considered **where reasonable grounds are found for the failure to meet this requirement**.

To the extent that the return date for the Presiding Officer’s nine (9) inquiries at bar is August 2, 2016, and pursuant to the Rule cited above, Respondents’ instant request would have had to have been filed on or before July 26, 2016; and in that Respondents’ instant request was not filed until July 28, 2016, said request is *untimely* within the meaning of the Rule cited above.

Least Respondents attempt to argue that it is within the Presiding Officer’s discretion to accept untimely submissions “...where reasonable grounds are found for the failure to meet this requirement”, *no* such ‘reasonable’ grounds are set forth, alleged, or pleaded within Respondents’ instant request. Nor can Respondents cure such fatal deficiency by attempting to allege same in a Reply to their instant ill-founded motion, as this would necessitate an explanation as to why such ‘argument’ was not proffered in the first instance.

Consequently, Respondents’ instant request for an extension of time must be denied as

having been made in *untimely* fashion.

In the alternative, and should the Presiding Office deign to accept Respondents' untimely request, despite the absence of a requisite good cause explanation for its untimeliness, the following is set forth in further opposition to Respondents' request.

Respondents' Repeated Requests for Extensions of Time

From the inception of this litigation and in virtually each and every instance inclusive of Respondents' own redundant, burdensome, and gratuitous motions made to the Presiding Officer, Respondents have *unendingly* requested extensions of time, leave for untimely submissions, extension of page limits, and other contrived reasons in furtherance of forestalling and delaying timely litigation of Complainants' claims herein, and gaining unfair advantage of which Respondents' instant application is only the most recent example thereof.

Most recently, Respondents' contrived to stay, delay and forestall, albeit unsuccessfully, having the Presiding Officer timely rule on multiple motions presently pending in order to accommodate an entirely frivolous application by a non-party individual of no standing whatsoever, who was previously found by parallel Courts of competent jurisdiction to be a *fraud and a demonstrated pathological liar*. The Presiding Officer wisely saw through this obvious sham and denied said application. It is consequently respectfully prayed that the Presiding Officer exercise similar vision, so as to similarly 'see through' Respondents' instant and bad faith attempt to further frustrate the proceedings herein.

Respondents' 'Unclean Hands'

It is respectfully submitted that Respondents have brought on their instant and ill-founded request for yet another extension of time with manifest *unclean hands*.

It would appear to not bear mentioning that a personal situation involving the loss of a family member by any counsel to any party in any action before the Federal Maritime Commission

("FMC") or any other Court would be an inviolate excuse for adjournment, extension of discovery, and other reasonable courtesies from the Commission and opposing counsel. Regrettably, your affirmant is loathe but nonetheless compelled to conclude that Respondents' counsel have reprehensibly sought to take advantage of an otherwise personal loss by claiming inadequate time to respond and other preclusionary time constraints allegedly arising out of a loss sustained nearly one (1) month ago. While the intent to take such unfair advantage is apparent upon its face, the very suggestion that *any* attorney would use a personal loss to gain advantage in any litigation is not only beyond the pale, but is so distasteful and abhorrent that your affirmant will not comment further on this issue, other than to note that in the midst of professed time constraints, Respondents' counsel apparently has time to interpose the instant bad faith motion.

Respondents' Fallacious Time Constraints

As the Presiding Officer is aware, Respondents' attorneys are a national law firm with over four-hundred (400) lawyers - - your affirmant is a sole practitioner. Notwithstanding the latter, and with a single exception occasioned by your affirmant having been in Israel, Complainants have not sought any other extension of time; nor pleaded any excuse (well-founded *or* specious) resulting in any application to the Commission for an extension of time. The irony of the dynamics of this equation should not be lost upon the Presiding Officer so as to provide a context for Respondents' instant request.

Respondents' Lack of Good Cause Shown

Respondents aver that their counsel "...will be effectively unable to work on the Reply between the time it was filed at 11:30 p.m. on July 26, 2016 and the date it is currently due, August 2, 2016". In the first instance, said representation fails to make any sense, grammatically or otherwise, in that Respondents allege that *their Reply* "...was filed at 11:30 p.m. on July 26, 2016...". Presumably, Respondents are referring to Complainants' Response to the Presiding

Officer's nine (9) inquiries at bar.

Such professed "unavailability" is unmasked as counsel attending to *other* cases, which apparently hold more importance to counsel than complying with the Presiding Officer's Orders and directives in the case at bar.

It is further unclear as to how Respondents' counsel can be "...attending to obligations to the United States Department of Justice" simultaneous with unnamed "responsibilities" of a personal nature.

In an inexplicable display of unmeasurable arrogance, Respondents allow that their counsel "...*may* from time-to-time have 'small amounts of time' to spend on the Reply" (emphasis added), clearly evincing the low esteem and minimal regard that Respondents have held, and continue to hold for Complainants' instant claims as well as the Presiding Officer's Orders and directives. Further, albeit in unlawyerly colloquial terms, Respondents additionally allow that the time available to devote to compliance with the Presiding Officer's Orders and directives by their counsel "...is unlikely to amount to more than a couple of hours", the breathtaking arrogance of which is self-evident.

In an obvious showing of indicia of consciousness of the inadequacy of their instant application, Respondents further proffer the entirely untoward suggestion of "...provid[ing] additional information to the Presiding Officer *in camera*." Needless to say, Complainants vigorously object to any such ex-parte communications.

Further, it is nothing short of ironic that Respondents, in the course of requesting an extension of time, make such request in an *untimely* fashion.

CONCLUSION

As set forth above, Respondents have made yet another in their unending series of applications for *untimely* submissions, extensions of deadlines imposed by the Presiding Officer,

extensions of page limits, and every other imaginable contrivance, inclusive of collusion with a demonstrated fraud and perjurer, in their exhaustive and unending efforts to gain unfair advantage in the litigation of this case.

Further, Respondents counsel have reprehensibly sought to trade on a personal loss in order to gaining such unfair advantage, thus abundantly demonstrating that there is no low beyond which Respondents' counsel will not stoop in furtherance of gaining such unfair advantage.

Additionally, Respondents' lame proffer in a firm of their size and resources that they are unable to have *any* other attorney handle the matters which are so pressing so as to result in continued disdain and disregard for the Presiding Officer's Orders and directives in the case at bar, as well as any semblance of professional civility or comity in cognizance of Complainants' right to have their claims timely heard, litigated, and resolved, constitutes *no good cause shown whatsoever* for the untimeliness of Respondents' request or their failure to explain same, other than to continue to harass, vex, and annoy Complainants and their counsel in an continuing effort to preclude the right to timely litigation of Complainants' claims that are otherwise rightly deserved by, and reside with Complainants.

For all these reasons, as well as in a spirit of fairness, equanimity, and in the interest of justice for *all* parties herein, the Presiding Officer is respectfully urged to deny Respondents' request for an extension of time in its entirety, *with prejudice*.

Respectfully submitted,

Dated: July 28, 2016
Cliffside Park, New Jersey

A handwritten signature in black ink, appearing to read 'Marcus A. Nussbaum', with a long, sweeping horizontal line extending to the right.

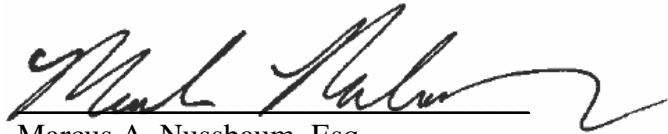
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached **COMPLAINANTS' RESPONSE TO RESPONDENTS' MOTION FOR EXTENSION OF TIME** upon Respondents' Counsel at the following address:

Nixon Peabody LLP
Attn: Eric C. Jeffrey, Esq.
799 9th Street NW, Suite 500
Washington, DC 20001-4501

by first class mail, postage prepaid, and by email (ejeffrey@nixonpeabody.com).

A handwritten signature in dark ink, appearing to read 'Marcus A. Nussbaum', is written over a horizontal line.

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marcus.nussbaum@gmail.com

Dated: July 28, 2016 in Cliffside Park, New Jersey.